

TOWN OF NEW WINDSOR

ZONING BOARD

October 24, 2011

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
 PATRICK TORPEY
 FRANCIS BEDETTI
 RICHARD HAMEL
 HENRY SCHEIBLE

ALSO PRESENT: ANDREW KRIEGER, ESQ.
 ZONING BOARD ATTORNEY

 NICOLE PELESHUCK
 ZONING BOARD SECRETARY

REGULAR MEETING:

MR. KANE: I'd like to call to order the October 24,
2011 meeting of the New Windsor Zoning Board.

APPROVAL OF MINUTES DATED 7/25/11 & 9/12/11

MR. KANE: Motion to accept the minutes of July 25
revised and September 12, 2011 meetings as written?

MR. BEDETTI: So moved

MR. HAMEL: Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

TABLED FROM LAST MEETING:

JOHN MORIN (11-25)

MR. KANE: Tabled from last meeting, John Morin for an existing rear deck which does not meet minimum rear yard setback of 50 feet. A variance of 18 feet is requested at 10 Ash Street in an R-3 zone. We tabled that to give Andy a chance to read the letter from their lawyer. Andy?

MR. KRIEGER: Thank you. I've got, I read both the letter and the follow-up letter. Basically, legally speaking, it's simply a recitation of the five criteria with which you're very familiar with and an argument with respect to those criteria. They claim that there's a detriment to nearby property owners because there's a loss of privacy. They claim that the benefit can be achieved by similar means, i.e. smaller deck which seems to be the crux of the argument here. And they are arguing that the variance is substantial. As you know, that's not an absolute bar to your, the board's deciding whatever they're going to decide. It's a factor to be considered but nothing more. They're complaining that no evidence, there's no evidence in the record of why a 10 foot wide deck is not sufficient. The burden of proof in any case in a presentation like this is on the applicant, whether they have met the burden of proof is your decision. That's nothing more than an argument, it's not something that's binding on you either way. There's some discussion in there about how if the variance granted is less than what's required the applicant has to, bears the risk for that but the applicant has already been so advised so there's nothing new there. They claim that there's significant environmental impact. They say it raises questions with respect to drainage, they don't specify what those questions are or how they're to be answered. They claim that the difficulty is self-created which as you know to an area variance is not a bar, it's an absolute bar for a use variance but not an absolute bar to an area variance. Throughout both the legal letters and the letter from the objectants which I will not further comment on unless you want me to since it contained no legal arguments it seems that the applicant has somewhat confused the role of the zoning board with that of the building department. They question why a stop work order wasn't issued. I don't know why it wasn't issued, the fact of the matter is it's not up to this

board to issue any such order or not issue any such order, it's not your job. But it simply contained an argument that says because the applicant acted without a building permit and because the variance is substantial you would be justified in denying it, not required to deny it, however, that's not what the case says. Merely says you will be justified. I don't think any member of this board is going to find that to be news. So it's a lot of verbiage but that's what it amounts to.

MR. KANE: Thank you, Andy. Further questions from the board to the applicant?

MR. TORPEY: Andy answered them all.

MR. BEDETTI: Yeah, I have a question, I went out and looked, I went to the door and nobody was home.

MR. MORIN: Today or--

MR. BEDETTI: No, it was a couple days ago and I, apparently nobody was home so I took the liberty to just walk to the back, I didn't get shot at or anything.

MR. MORIN: No, it's pretty friendly.

MR. BEDETTI: I figured it was okay.

MR. MORIN: Except for the neighbor.

MR. BEDETTI: Would it be possible, this is a question, this is not a request or anything like that, the size of the deck is substantial, there's no question about it compared to the size of the house and how far out it comes and the fact that it does require a variance it's beyond the requirements of the law. As a means of compromise if that's necessary the decking, what are they, one and a half by six, is that what it is?

MR. MORIN: Yeah.

MR. BEDETTI: It's like three boards from the edge of the deck which amounts to about 18 inches, you know.

MR. MORIN: The overhang?

MR. BEDETTI: Yeah, on the overhang, if it could be modified removing at least those three boards. You

probably couldn't do anymore than that because then you're beyond the supports, you know, but, I mean, you could conceivably remove three boards without affecting the integrity or safety of the deck if it turns out that it is necessary.

MR. MORIN: Would that be okay for the permit for the structure, is that okay not to have an overhang?

MRS. PELESHUCK: You'd have to talk to the building inspector.

MR. KANE: That's a building department decision, nothing to do with us.

MR. MORIN: Frank told me that I needed some sort of overhang, I did think of that myself.

MR. KANE: If you can limit the overhang to whatever is just needed by the building department cause no matter what we decide you still have to submit everything to the building department, do exactly what they say, just an option so if you can keep it to whatever the minimum is needed as an overhang that would be appreciated.

MR. KRIEGER: Just to remind the members of the board, any variance that you propose can have conditions attached to it. There's been some discussion about screening, there was some oral discussion last time as well appearing in the written decision and such other things as you may see fit or may not but when you make the proposal for the motion and if you intend to add conditions at the time you make the proposal.

MR. KANE: Do you have anything that you want to present further?

MR. MORIN: I didn't really want to have to but he basically, half of these statements aren't true, I've spent the last eight years cleaning up my parents' mess and I take it as a real personal offense that he did this. I helped him, I had stage four cancer, I was going through treatment, I helped him. This is what the house used to look like when I bought it, this is the old porch, this was back there and I didn't want to live with something like that.

MR. KANE: It's a huge improvement, believe me. We had the building inspector out looking at it, you guys want to see this?

MR. BEDETTI: The complainant admitted to that that the new deck is definitely an improvement.

MR. MORIN: It all stemmed from this last year he went and he cut down some indigenous sumac trees that are right on our property cause he didn't like them, they're up to \$400 each in value. We called him, he lied about it and my wife was really mad cause she's Mrs. Green and she wanted me to go after him. He finally admitted it and asked if I wanted a ficus. I said I don't want your ficus, I'm going to call the DEP. No, no, no, here's \$100 like we didn't do anything, I should of because now he's--

MR. KANE: That's neither here nor there.

MR. MORIN: All these statements.

MR. TORPEY: Is three boards really going to make a difference?

MR. MORIN: It will be 18 inches.

MR. BEDETTI: Well, you know, it's an attempt at a compromise, that's all it is.

MR. KANE: Again, if you can keep that to a minimum?

MR. BEDETTI: If we ask for anything more it would affect the integrity of the deck.

MR. MORIN: I talked to Frank a lot, what I can do, how far I can go, what the specs were and I'm right there, I'm an idiot, I didn't know I needed all this stuff when I started it. But I had to something, I was afraid the neighbors' kids were going to fall through. I didn't know the stuff, that's my fault for continuing but, you know.

MR. KANE: Believe me, half the people that come in front of us don't know the stuff, so don't worry about it.

MR. MORIN: I've been in the house for 35 years and in '89 when we were only there for four years I didn't want him building a house there but I didn't go through all this, it's like--

MR. TORPEY: Aren't neighbors great?

MR. MORIN: I've always helped the guy.

MR. BEDETTI: I have one other question and the fact that, you know, they talk about the variance being substantial, okay, now if you, apparently he really has a non-conforming, pre-existing, non-conforming building lot there, you know.

MR. KANE: Right.

MR. BEDETTI: And with a pre-existing, non-conforming building lot the rear yard could be as little as 40 feet. So if we're dealing now with a difference of 32 to 40 feet as opposed to 32 to 50 feet then the variance is not as significant as the complainants are making it out.

MR. KANE: That's true.

MR. BEDETTI: So that would be--

MR. KANE: Anything further?

MR. KRIEGER: All I will say is there is no legal definition and although there's discussion about I see the word significant throughout both decisions and statute there's no definition of the, what is or is not significant. So it's something that can be always argued either way. Again, it's not up to the board, that doesn't necessarily automatically preclude him from getting the variance merely because it's in the eyes of one person or another significant. You are each entitled to your opinion and as Mr. Bedetti said you're entitled to state it on the record and I invite you to do so.

MR. KANE: Further questions?

MR. MORIN: I just, and all the years that I have been there I never once seen him on his deck out back ever.

MR. KANE: That has nothing to do with our decision.

MR. MORIN: I know but it's like, and I sent this sketch along.

MR. TORPEY: Did you think about the eight foot fence?

MR. MORIN: There was literally a trailer full of, my mother's like a hoarder so it was right on the property line so it's blocking the house, I got rid of all that and cleaned it all up. There was more garbage in the corner where you see the other, sumac trees, I got rid of all this stuff and nothing is ever good enough.

MR. TORPEY: I've got no other questions.

MR. KANE: That's the case then.

MR. BEDETTI: My reason for writing up the 40 foot possibility is the requirement as opposed to 50 feet and whether this in fact complies with that then we have to put that in the statement I guess or the motion so to speak.

MR. KANE: What do you mean?

MR. BEDETTI: In other words, his variance would be if it's not 18 feet it's only 8 feet, you know, if the requirement is--

MR. KANE: I don't think we can change what the building department put down there, they put down 50, we've got to go down with that 50. You follow?

MR. KRIEGER: Yes, but in terms of the amount of variance requested, yes, you do, you're bound by what the complaint is. However, as I indicated that you have, that you each have a large amount of discretion in your votes and you can certainly cite that as a reason to vote the way you did. In other words, if Mr. Bedetti decides to vote, just give this as an example in favor of he can say that one of his deciding factors was that in his view it's not as significant as was claimed for the reasons set forth on the record.

MR. KANE: Okay. Any further questions?

MR. TORPEY: No, I'm good.

MR. KANE: Then I'll accept a motion.

MR. BEDETTI: So the applicant is--

MR. MORIN: John Morin.

MR. BEDETTI: I'll make a motion that we grant a variance for an existing rear deck that does not meet

minimum rear yard setback for John Morin at 10 Ash Street in an R-3 zone.

MR. TORPEY: I'll second that.

MR. KANE: Let's note that the variance requested is 18 foot variance is what's requested.

MR. KRIEGER: As requested.

MR. BEDETTI: As requested.

MR. KRIEGER: Now, just for my clarification in writing do you wish to attach any conditions to that or not? I mean, it's totally optional, you don't have to.

MR. BEDETTI: Well, that should be a decision of the whole board.

MR. KANE: I think the only question we had was with the overhang, that's really got to be decided by the building department and you have already verbally spoken and it's on the record that you will keep that to whatever minimum.

MR. BEDETTI: I would add that, that the overhang be kept at a minimum if any modifications.

MR. MORIN: To whatever the plan was.

MR. BEDETTI: Any modifications that could comply with the building department.

MR. KRIEGER: In the prior discussion, there was discussion about the vegetation type screening, is there anything that you want to do there?

MR. KANE: Personally, I'm not for it.

MR. BEDETTI: I would like to see the applicant do what he can do to, I'm not going to put the condition.

MR. KANE: Peace of mind, it might be nice to put some evergreens.

MR. MORIN: Believe me, there's going to be a wall as long as it's okay, permit for trees.

MR. KANE: Okay, we're all set, I need a second.

MR. HAMEL: Second it.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MRS. PELESHUCK: These are your next steps with the building department. I'll call you when your permit is ready.

MR. MORIN: Thank you very much.

PRELIMINARY MEETINGS:

CORINNE & MATTHEW LYNCH (11-29)

MR. KANE: Corrine and Matthew Lynch, request for two variances for an existing shed and an existing rear deck. The shed needs a four foot variance on the side and 10' to the rear property line. The second variance for the existing rear deck which is 28' x 28'7 foot. The deck is 30.5' from the rear property line, a variance of 19.5' is required located at 42 Knox Drive in an R-4 zone.

MRS. PELESHUCK: She's not here.

RICHARD & ROSE MARIE ROSE (11-30)

MR. KANE: Next preliminary Richard and Rose Marie Rose request for a variance for a 10 foot by 14 foot shed. Proposed shed will not meet the minimum 10 foot side yard setback. A variance of nine feet is requested at 2611 Liberty Ridge in an R-3 zone. In New Windsor, we hold two meetings, we hold a preliminary meeting and then by law a public meeting where we can make our decisions. And the reason we do that is we can get a general idea of what you want to do and you have the right information for us to make a decision. In other towns if you walk in, you don't have it, you lose and then you've got to wait six months before you come back. So that's why we hold a two step process. Tell us exactly what you want to do.

MR. ROSE: Basically--

MR. KANE: Just state your name and address.

MR. ROSE: Richard Rose, 2611 Liberty Ridge, New Windsor, New York 12553. Okay, basically, the back yard I just want to put a shed up, put my pool equipment and everything. In this area of The Reserve they're all quarter acre lots, not really a whole lot of space. I do have a pool and a swing set and the only place I can actually fit a shed back there is here.

MR. TORPEY: You're not going to put a deck on the shed are you?

MR. ROSE: No.

MR. SCHEIBLE: I'm looking at these pictures, I don't see any sheds in the neighborhood.

MR. ROSE: Actually to either side there's a shed.

MR. SCHEIBLE: I don't mean to be funny but where is Liberty Ridge?

MRS. PELESHUCK: In The Reserve.

MR. SCHEIBLE: Okay, all right, thank you.

MR. BEDETTI: That answers a lot of questions.

MR. ROSE: The neighbor to the right has it, he's all

the way to the right and the one to the left he's right behind the fence behind the swing set.

MR. KANE: Is the shed going over in this area here?

MR. ROSE: No, the opposite corner.

MRS. PELESHUCK: Where the gray container is, correct?

MR. ROSE: Yes.

MR. KANE: So back right in here, last picture where this gray container is right in there.

MRS. PELESHUCK: If you're looking at the back of the house it's on the left.

MR. ROSE: Correct.

MR. KANE: You plan on sticking it right in the corner?

MR. ROSE: Leave a foot back because it's 10 foot and I will have three feet until I hit my walkway with the ramp that comes down off the house.

MR. KANE: Going to be some questions that have to be asked, answers are absolutely obvious but I have to ask them anyway. Not going to be cutting down any trees, substantial vegetation in the building of the shed?

MR. ROSE: No.

MR. KANE: Creating any water hazards or runoffs with the building of the shed?

MR. ROSE: No.

MR. KANE: Any easements running through the area where the shed is going to be located?

MR. ROSE: No, you can see the back.

MR. KANE: And the 10 x 14 shed is the minimum you need?

MR. ROSE: I think it's about what I need, we wanted it a little bit bigger because you always need more space.

MR. KANE: Never have enough storage, never. Further questions from the board at this time?

MR. SCHEIBLE: What's the, does it show a height of the shed?

MR. ROSE: Ten foot nine to the highest point of the roof.

MR. SCHEIBLE: So are you going to be over the fence?

MR. ROSE: Yeah, it's a six foot fence.

MR. SCHEIBLE: Is it a nice design?

MR. ROSE: Yes.

MR. KANE: For the public hearing, could you bring in a photo for us, brochure?

MR. ROSE: You should have it.

MRS. PELESHUCK: I have that in the building permit.

MR. KANE: So we have it for public hearing, that's why we have a prelim.

MR. SCHEIBLE: Since it's going to be looked at over that fence that's there right now we just want to make sure that it's not going to create an eyesore with your neighbors if they're going to be looking at some rinky-dink shed, you know.

MR. ROSE: No, it's a quality shed from Mr. Shed.

MR. SCHEIBLE: I'm bringing that up, that's all.

MR. ROSE: You can see the way the back yard is my wife wouldn't let me put a shed like that there.

MR. KANE: I don't think she puts up with any rinky-dink like that. Further questions? If not, I'll accept a motion to set up for a public hearing.

MR. HAMEL: I'll make a motion that we schedule a public hearing for Richard and Rose Marie Rose for the variance as requested.

MR. TORPEY: Second that.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MRS. PELESHUCK: Here are your next steps and dates are on there with how many envelopes and remaining balance.

MR. ROSE: Okay, thank you.

MR. KANE: Have a good evening.

PUBLIC HEARINGS:

JOHN CHANNEL (11-21)

MR. KANE: Public hearings, John Channel, tonight's first and only public hearing, John Channel, variance is requested for proposed deck extension of eight feet into their side yard setback. This will leave 23.8 to the side property line. A variance of 16.2 feet is required at 1036 Rolling Ridge in an R-3 zone. Good evening, John.

MR. CHANNEL: Good evening.

MR. KANE: Same as the preliminary, tell us your name and address for the young lady over there.

MR. CHANNEL: John Channel, 1036 Rolling Ridge, New Windsor, New York 12553.

MRS. PELESHUCK: What do you want to do?

MR. CHANNEL: I don't want to do anything, I want to see if I got the variance.

MR. KANE: You want to add an extension?

MR. CHANNEL: Yes, I want to add an extension, the deck is approximately 10 feet off the building, I have like a little out-cove so it kind of is a narrow way to get through the deck. I'd like to extend that eight feet, deck is already there, just adding eight feet to a deck and make it a little longer, 35 feet along the building line.

MR. KANE: And the obvious questions, no cutting down trees, substantial vegetation in the building of the deck?

MR. CHANNEL: No.

MR. KANE: Creating any water hazards or runoffs?

MR. CHANNEL: No.

MR. KANE: Any easements running through the area of the deck?

MR. CHANNEL: No.

MR. KANE: And the reason you're here for a side yard setback is because you're a corner property and you have two front yards?

MR. CHANNEL: Yes and I've been here before.

MR. KANE: Yes, you have. Questions gentlemen?

MR. TORPEY: Did you learn anything from the first guy?

MR. CHANNEL: Yeah, don't buy a corner lot.

MR. SCHEIBLE: In other words, just clarify this.

MR. CHANNEL: I'm going to go along here and out eight feet off this.

MR. SCHEIBLE: In other words, this will continue over to this corner?

MR. CHANNEL: That will continue and the whole deck will be this way.

MR. SCHEIBLE: Eight feet this way?

MR. CHANNEL: Correct.

MR. SCHEIBLE: So from this point here to over here is approximately?

MR. CHANNEL: Thirty-five, if I remember the numbers right.

MR. SCHEIBLE: Actually you're building a new deck which would be--

MR. CHANNEL: No, I'm extending an old deck.

MR. SCHEIBLE: Looking at it as a new deck.

MR. TORPEY: Looks good.

MR. KANE: You have a rear deck coming out?

MR. CHANNEL: Yes.

MR. KANE: Is it a safety hazard without a deck there?

MR. CHANNEL: Yes.

MR. KANE: Your deck width right now is eight to ten foot?

MR. CHANNEL: When we bought the house I think it was 10 x 20.

MR. KANE: You've got those two rails, you can tell by the end they're usually four to five feet.

MR. CHANNEL: That's another reason I need another set of columns eight feet would give me exactly what I need, it's a nice, round number.

MR. KANE: At this point, I'm going to open it up to the public, ask if anybody's here from the public? Seeing as there's not, we'll close the public portion of the meeting and bring it back to Nicole and ask how many mailings we had.

MRS. PELESHUCK: On the 11th day of October, 2011, I prepared 42 addressed envelopes and received no written response back.

MR. KANE: Back to the board for further questions. No further questions, I'll accept a motion.

MR. BEDETTI: I'll make a motion that we grant the variance for proposed deck extension, variance of 16.2 feet at 1036 Rolling Ridge in an R-3 zone.

MR. TORPEY: Second that.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MRS. PELESHUCK: There's your next steps but I'll call you when your permit is ready, should be tomorrow.

MR. CHANNEL: Okay.

FORMAL DECISIONS:

1. American Petroleum (1st Ask)
2. KC Engineering
3. Mollard
4. Demeo

MR. KANE: We have four formal decisions.

MR. KRIEGER: Nicole, the first one is that the one that you want me to look at?

MRS. PELESHUCK: No.

MR. KANE: What's the 1st Ask?

MRS. PELESHUCK: That's the corporation 1st Ask American Petroleum represented 1st Ask.

MR. KANE: We can take all four of them in one vote, I'll accept a motion.

MR. BEDETTI: I'll make a motion that we accept the final decisions for American Petroleum, KC Engineering, Mollard and Demeo as written.

MR. HAMEL: I'll second it.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MR. KANE: We have one next month or two?

MRS. PELESHUCK: One.

MR. KANE: Motion to adjourn?

MR. BEDETTI: So moved.

MR. SCHEIBLE: Second it.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE

MR. KANE

AYE

Respectfully Submitted By:

Frances Roth
Stenographer